

1 MS. MABRY: One of--with her face behind.

2 THE COURT: Right.

3 MS. MABRY: I'd actually almost like to see the
4 originals in order to do that.

5 MR. PLUMMER: (Whispering)

6 MS. MABRY: This one?

7 MR. PLUMMER: Here is one.

8 MS. MABRY: Okay.

9 MR. PLUMMER: Nine/fourteen/twenty-eight--

10 THE COURT: Just kind of cut down on cumulative
11 evidence, so.

12 MS. MABRY: The 9:14:28 one.

13 THE COURT: I'm sorry, you want me to go back to
14 September now?

15 MS. MABRY: Well, for what, wait a minute, wait
16 a minute, I'm sorry.

17 MR. PLUMMER: Here is the 9:14:28--

18 MR. NICKOLA: She means the time, Judge.

19 THE COURT: Oh, I'm sorry, all right, yes.

20 MS. MABRY: Well, there is actually two, that
21 blocks her eyes. The one at 9:13:23 gets her, but
22 doesn't get the EPT test. To tell you the truth I--I
23 would like those two in, the one at 9:14:28 and the
24 other at 9:13:23--

25 THE COURT: Okay. All right, those, 9:13:23,

1 9:14:28, 9:21:20--

2 MS. MABRY: Then the other ones would be out.

3 THE COURT: And then you what the 9:22:58?

4 MS. MABRY: The 9--9:22:58, correct.

5 THE COURT: All right, there you go.

6 MS. MABRY: Give the clear photo of the results.

7 MR. PLUMMER: Okay, hang on just a second so we
8 don't, I think she just ruled on this one, this one,
9 this one--

10 MS. MABRY: Here I can show you the ones--

11 MR. PLUMMER: Well, no, he wants to see the
12 originals.

13 MS. MABRY: Oh, okay.

14 MR. PLUMMER: Try that.

15 THE CLERK: --ours are--

16 MS. MABRY: Okay--

17 MR. PLUMMER: Here try--try that.. They do have
18 different times on them, Major, and that's--

19 THE COURT: Now, the next one says no subject,
20 10/20/99 at 10:37.

21 MS. MABRY: That's from her to him.

22 THE COURT: Correct, coming in then.

23 MS. MABRY: Here this comes in--

24 THE COURT: Then we've got no subject in mine, I
25 got two in a row, 9/29/99(sic) at 10:47 and 10:53 that

1 are just black, I couldn't tell you what those are,
2 totally black--

3 MS. MABRY: Judge, the one at 10:47:23 is just a
4 head shot of Sharee Miller and then she apparently takes
5 a shot of her chest area--

6 MR. PLUMMER: Your Honor--

7 MS. MABRY: --and sends it to him.

8 MR. PLUMMER: Giving you the originals you will
9 see one of those is one you already marked.

10 THE COURT: You can see a lot better.

11 THE CLERK: Um-mm.

12 THE COURT: This is the same as one of those
13 earlier ones that I--you have marked--

14 MR. PLUMMER: That was the earlier one.

15 THE COURT: It was, this is, 'cause I thought I
16 put a one on the one earlier? Well, I have seen it--

17 MR. PLUMMER: I'm sorry, you know what--

18 THE COURT: --somewhere today before.

19 MR. PLUMMER: Yeah, I could be wrong, your
20 Honor.

21 THE COURT: All right.

22 MS. MABRY: I--I don't think you--

23 THE COURT: Well, if it's a duplicate it's not
24 coming in.

25 MS. MABRY: No, it's--it's not a duplicate, I

1 think that she has just told him I'm pregnant and then
2 here is like the beginning shots of what my body looks
3 like and my head.

4 MR. PLUMMER: Your Honor, I thought the yellow
5 tag was yours, but it is actually one Ms. Mabry had put
6 on there earlier--

7 THE COURT: Okay. Well, I had--some were her
8 tags, but I went one, two, three, four on some earlier
9 one--

10 MR. PLUMMER: Right--

11 MS. MABRY: Right--

12 THE COURT: And this one isn't--

13 MR. PLUMMER: And this is not--

14 MS. MABRY: You have already addressed those--

15 THE COURT: This one--

16 MS. MABRY: --it's not those--

17 MR. PLUMMER: This is not one of those, your
18 Honor.

19 THE COURT: --not one of those, but it is the
20 same picture again.

21 MS. MABRY: It actually is not--

22 THE COURT: It looks like I think just like num-
23 ber one in that pack you showed me--

24 MS. MABRY: It--it looks similar--

25 MR. PLUMMER: Here, I can find another one--

1 MS. MABRY: --but the timing of when--

2 MR. PLUMMER: This--

3 MS. MABRY: --she is sending it is, you know,
4 she is giving him the progress on the--

5 MR. PLUMMER: Here is number one--

6 MS. MABRY: --baby thing.

7 THE COURT: Mine doesn't have any text on the--
8 with it, does it? I don't have any text--

9 MS. MABRY: No--

10 THE COURT: --going along with this particular--

11 MS. MABRY: No--

12 THE COURT: --transmission.

13 MS. MABRY: Just that it is from her to him and
14 the time--

15 THE COURT: She sent a picture to him, all
16 right, it's admitted, go ahead.

17 Next is Re: No subject of 10/21.

18 MS. MABRY: That--that's from him to her saying,
19 Baby, it's all gonna be fine soon, very soon--

20 THE COURT: State of mind, coming in.

21 The next is no subject 10/21/99 at 2:12.

22 MS. MABRY: That is from her to him.

23 THE COURT: Coming in.

24 The next is no subject 10/21/99, 5:54.

25 MS. MABRY: That is from her house to Jerry Cas-

1 saday's house and this is from BD Junk to Devious Mind,
2 those are the user names which will be identified as
3 from her house to Jerry Cassaday's house, and this is
4 the one where we believe that she's impersonating her
5 husband, taunting Jerry about, I have her, I have her
6 children, now I have another baby, my baby, get over it.
7 Every time you contact me or her you should think of the
8 consequences. If you love her you will leave her alone,
9 I'm her husband. And another thing, you don't ever
10 wanna her to put a knife to me again, it would not be
11 wise. Attempted murder cannot make her look good. This
12 is definitely relevant to her state of mind--

13 MR. PLUMMER: His.

14 MS. MABRY: To his state of mind. She is incit-
15 ing him to kill her husband.

16 MR. PLUMMER: Your Honor, do you--are we making
17 ourselves clear, our perception on this--

18 THE COURT: Yeah, I see it, I just couldn't un-
19 til today I had no idea whether it related to this be-
20 cause I didn't know that, screen names I guess you call
21 them.

22 And your theory on this one is it's her imper-
23 sonating her husband?

24 MS. MABRY: Yes, that screen name is registered
25 to her account, BD Junk.

1 MR. PLUMMER: If I may, your Honor?

2 MS. MABRY: And--

3 THE COURT: Yes. I'm sorry, Mr. Plummer, what
4 did you say?

5 MR. PLUMMER: If--if I may it's--the--we're--I
6 don't want the Court to rely too heavily on the fact
7 that when we have the person from AOL here they'll--
8 they'll testify we expect that BD Junk is one of the
9 screen names listed under her, but I would rather, your
10 Honor, not ask you to admit this as a necessarily state-
11 ment from her. At this point one of the issues here is,
12 and this is what I'm, I'm not sure we are making clear,
13 is Mr. Cassaday's state of mind thinking that this BD
14 Junk because Bruce owns, Bruce Miller owned B and D
15 Auto, that thinking that this was actually from Mr.
16 Miller and if you read the content you will see that it
17 kind of brags about his relationship with Mrs. Miller
18 and that, your Honor, I submit makes this admissible to
19 show Jerry Cassaday's state of mind as to Mr. Miller. I
20 mean, here it would be on its face apparent that he was
21 being--

22 THE COURT: Well, at any rate, you're saying--

23 MR. PLUMMER: --aggravated but--

24 THE COURT: --it's her to him, so if it's--

25 MR. PLUMMER: Okay--

1 THE COURT: --shown to be her to him then there
2 you go.

3 MR. PLUMMER: Okay. Thank you, your Honor, I
4 wanted to make clear what we--

5 THE COURT: 801(d)(2).

6 MR. PLUMMER: Thank you.

7 THE COURT: And you will be able to have some-
8 body testify Devious Minds is one of his screen names,
9 is that correct--

10 MR. PLUMMER: Yes, your Honor.

11 THE COURT: All right. Subject to the
12 foundation--

13 MR. PLUMMER: Of course--

14 THE COURT: --that will assumedly be laid at
15 trial, it will come in as a party admission.

16 Next is, FWD: There are two scroll down.

17 MS. MABRY: Judge, this is definitely relevant
18 and this is from her to him.

19 THE COURT: All right, her to him, coming in.
20 That's at 9:10.

21 Then there is Re: I love you, 10/22/99.

22 MS. MABRY: That is from him to her and again it
23 is the state of mind.

24 THE COURT: State of mind, two pages, coming in.
25 The next says, Hi, honey, 10/22/99.

1 MS. MABRY: That's from him to her, and yes some
2 day soon you will be Sharee Cassaday, state of mind.

3 THE COURT: All right, that will be coming in.

4 Then the next says, Re: I love you, 10/22/99 at
5 7:39, her to him coming in--

6 MS. MABRY: Her to him.

7 THE COURT: Next, no subject, 10/22/99, 8:25.

8 MS. MABRY: Her to him.

9 THE COURT: Her to him, coming in.

10 The next is no subject, 10/22/99, 3:17.

11 MS. MABRY: Her--her--

12 THE COURT: Her again, communicating.

13 Two, let's see the last page just has the word
14 Sharee on my copy--

15 MR. PLUMMER: Right.

16 MS. MABRY: Correct.

17 THE COURT: Two pages but only one word on page
18 2.

19 MS. MABRY: Right.

20 THE COURT: That comes in.

21 Next is, Please listen, 10/23.

22 MS. MABRY: That is from him to her, and yester-
23 day you finally told me you would get out of there. He
24 also tells her she is vague and unclear, it's state of
25 mind.

1 THE COURT: All right, it will come in as state
2 of mind, 10/23/99.

3 Next is no subject, 10/23/99 at 8:48, hers to
4 him.

5 MS. MABRY: Her to him.

6 THE COURT: And this is two pages.

7 MS. MABRY: This also, Judge, well, I'm--

8 THE COURT: Then no subject 10/23/99, 12:56,
9 hers--

10 MR. PLUMMER: Her--

11 MS. MABRY: Her to him.

12 THE COURT: Is, let's see, is this two pages,
13 two pages on this one also.

14 The next one is called no subject, 10/23/99.

15 MS. MABRY: Her to him.

16 THE COURT: Is hers to him, at 1:48.

17 The next is entitled, Where is my baby,
18 10/24/99.

19 MS. MABRY: That's from him to her, relevant,
20 I'm gonna be a daddy.

21 THE COURT: State of mind, I'm so excited my
22 life is turning around, state of mind, coming in.

23 Next is, Hi, honey, 10/24/99.

24 MS. MABRY: That's from him to her.

25 THE COURT: Still at state of mind, excitement

1 over--

2 MS. MABRY: State of mind--

3 THE COURT: --the anticipation of a baby.

4 The next is no subject, 10/24/99, 6:46.

5 MS. MABRY: Her to him.

6 THE COURT: Coming in.

7 Then the next is no subject, 10/24/99 at 2:07.

8 MS. MABRY: Her to him--

9 THE COURT: Her to him.

10 The next is no subject, 10/24/99 at 2:08.

11 MS. MABRY: Her to him.

12 THE COURT: Coming in.

13 Next is no subject, 10/24/99 at 2:08.

14 MS. MABRY: Her to him--

15 THE COURT: Her to him.

16 The next no subject, 10/24/99, 2:09.

17 MS. MABRY: Her to him.

18 THE COURT: Her to him.

19 The next is again no subject, 10/24/99 at 2:10,

20 her to him.

21 The next no subject, 10/24/99 at 7.

22 MS. MABRY: Would--

23 THE COURT: A photo or two photos around my copy
24 anyway.

25 MS. MABRY: Her to him, one depicting a pregnant

1 stomach and the other I believe her son.

2 THE COURT: Okay, coming in then.

3 Next no subject, 10/24/99 at 11:12.

4 MS. MABRY: Her to him.

5 THE COURT: Coming in.

6 Next is no subject, 10/24/99, 11:13.

7 MS. MABRY: Her to him.

8 THE COURT: Next no subject, 10/24/99, 11:14.

9 MS. MABRY: Her to him.

10 THE COURT: All right, that's admitted or will
11 be admitted, foundation.

12 Next is no subject, 10/25/99, his--

13 MS. MABRY: It's from him to her, I want so
14 badly to feel you belly to feel our baby, trust in me.

15 THE COURT: Okay, there is a state of mind, that
16 will coming in.

17 Then we have no subject, 10/25/99 at 8:49, a
18 photo as well as the next, well, we had a series of pho-
19 tos. Now, are these the same ones we have already cov-
20 ered, I think so--

21 MR. PLUMMER: No.

22 THE COURT: These are different than the ones
23 we've--

24 MS. MABRY: No, I think we have referred to 'em
25 earlier. The--I believe Mr. Nickola would have marked

1 these.

2 MR. PLUMMER: Right, these are the ones Mr.
3 Nickola was referring to with the--a belly with a negli-
4 gee I think he referred to it.

5 MS. MABRY: Yes. Judge--

6 MR. NICKOLA: There is a couple with a T-shirt
7 just showing the belly, and then it goes on to show the
8 negligee where her breasts are exposed--

9 THE COURT: Well, I--I thought made a ruling on
10 these--

11 MS. MABRY: You said one and actually there are
12 three photographs with her in a T-shirt and I would ask
13 to introduce one of the three, and that would be the one
14 at 10/25 at 8:52:27.

15 THE COURT: All right.

16 MS. MABRY: Now, the other two I'd throw out.

17 THE COURT: All right.

18 MS. MABRY: And then in the negligee, if I could
19 look at the originals to see which one--

20 THE COURT: Yeah, you can take the originals, I
21 don't have them.

22 MR. PLUMMER: Right, right here.

23 MS. MABRY: Right.

24 MR. PLUMMER: This one.

25 MS. MABRY: Okay. We would move to introduce

1 the 9:25:28, and then the other three would be--and the
2 negligee would be out.

3 THE COURT: All right.

4 MS. MABRY: And then there is the final one on
5 10/25/99 at 9:30 where she is grabbing her breast and
6 that is from him to her and we would ask that remain in
7 'cause it is not cumulative.

8 THE COURT: You say it's him to her?

9 MS. MABRY: I'm sorry, her to him.

10 THE COURT: Yeah, it's not cumulative of any-
11 thing else, is that right, 'cause--

12 MS. MABRY: Correct--

13 THE COURT: --my copy is so bad I couldn't tell
14 you?

15 MS. MABRY: But--

16 THE COURT: All right.

17 MS. MABRY: It's not bad on the color and we in-
18 tend on making color copies, hopefully.

19 Do you wanna see it--

20 MR. PLUMMER: You didn't see it--

21 THE COURT: I haven't ruled on it before, right,
22 is that correct?

23 MR. PLUMMER: No, I don't believe so, your
24 Honor. Well--

25 THE COURT: Could I just have a look, please?

1 MS. MABRY: Um-mm.

2 THE COURT: It looks like one I've seen.

3 MR. NICKOLA: I think it is.

4 THE COURT: I think I've already had this one or
5 one just like it in that package with the--

6 MS. MABRY: That is the only one we have come
7 across so far, I think she is trying to say her breasts
8 are getting bigger 'cause she is getting pregnant--
9 'cause she is pregnant or--

10 THE COURT: Right. Well, this is--it will come
11 in as long as there is not another one, but--

12 MS. MABRY: Right, correct--

13 THE COURT: --I'm not going to have two. So if
14 you have another one somewhere that's around--

15 MS. MABRY: I don't think so--

16 THE COURT: --they're not all coming in, just
17 one.

18 MS. MABRY: No.

19 MR. PLUMMER: Okay.

20 THE COURT: So we are all clear.

21 Next, Hi, honey, 10/26/99/

22 MS. MABRY: That's from him to her, Hey, my lit-
23 tle baby factory, signed big daddy, state of mind.

24 THE COURT: The Court will admit that.

25 The next one will be no subject, 10/26 at 7:30,

1 her to him, coming in.

2 Then we have another--and another thing
3 10/27/99.

4 MS. MABRY: From him to her, state of mind, My
5 sweetie, my lover and the mother of my babies.

6 THE COURT: All right, that's a one-page, that
7 will come in, state of mind.

8 Then we have Re: no subject, 10/27/99.

9 MS. MABRY: That's from him to her, We have to
10 know that all will be okay, that it is all so soon to be
11 over and we will soon, very soon, be together and in
12 each other's arms.

13 I would say that's a statement against interest
14 as well as a co-conspirator statement.

15 THE COURT: Right. That will be admitted and
16 that will be both 803(3) and 804(b)(2), I'm sorry
17 (b)(3), sorry.

18 The next one in my package, I'm here, 10/27/99.

19 MS. MABRY: That is from him to her, and that is
20 for a state of mind, You are my world, sweetheart, my
21 little baby factory.

22 THE COURT: State of mind, admitted.

23 The next no subject, 10/27/99 at 4:43, her to
24 him, admitted.

25 MS. MABRY: Her to him.

1 THE COURT: The next no subject, 10/27/99, 3:11.

2 MS. MABRY: Her to him.

3 THE COURT: That will be admitted.

4 Next one is no subject, 10/27, 5:31, her to him,
5 and this is, one, two, two pages.

6 MR. PLUMMER: Your Honor, could I just ask the
7 Court one moment's patience?

8 THE COURT: Yes.

9 MR. PLUMMER: Your Honor, while the investigator
10 looks at--if the Court will notice that it is apparent
11 from the document itself that the margins go beyond the
12 page that we have and I was just conferring with Detec-
13 tive Potrafka to, he was the one who found these,
14 whether he would know at this time if we are able to re-
15 trieve the entire margins somehow or not.

16 MS. MABRY: And, Judge, while he is looking at
17 that, this is statements of co-conspirators and--

18 THE COURT: It's hers to him.

19 MS. MABRY: Right, I--I agree, but it also has
20 additional basis.

21 THE COURT: I'm not--I'm explicitly not comment-
22 ing on that particular--

23 MS. MABRY: Okay.

24 MR. PLUMMER: Did the Court make a ruling while
25 I wasn't listening, I'm sorry?

1 THE COURT: No, I didn't rule 'cause I thought
2 you didn't want me to.

3 MR. PLUMMER: Oh.

4 THE COURT: It's two pages though, right?

5 MR. PLUMMER: Correct, your Honor.

6 MS. MABRY: Yes.

7 THE COURT: Her to him--

8 MR. PLUMMER: Your Honor, I just--we just
9 wanted, you know, we have been going through these in a
10 pretty rapid pace and--

11 THE COURT: If it is too fast, well, I should
12 slow down, Mr. Plummer--

13 MR. PLUMMER: Oh, no, no, I--I just wanted to
14 kind of bring the Court's attention to the fact that
15 this--

16 THE COURT: I know the margins have about one or
17 two letters off on the right.

18 MR. PLUMMER: Correct, your Honor.

19 THE COURT: And didn't know if it was my copy or
20 I don't know--

21 MR. PLUMMER: Right. And it appears on all--it
22 appears to be on the original as well as the copy, so we
23 would ask the Court to allow this to come in as a state-
24 ment from her to him assuming that we can get the entire
25 content in. We may have to, just so the Court and coun-

1 sel know, what we might have to do is find this document
2 back on his hard drive, pull it off and then actually
3 make a copy and shrink the size of the letters a little
4 bit so it all come within the margin of a page.

5 THE COURT: Yeah, it's just a letter or two on
6 the right.

7 MR. PLUMMER: Right.

8 MS. MABRY: Right.

9 MR. PLUMMER: Other--if the--I mean, I just
10 didn't want the Court to pass that unknowingly.

11 THE COURT: Well, I just assumed you will get it
12 fixed up--

13 MS. MABRY: Well--

14 MR. PLUMMER: Okay--

15 THE COURT: --in the proper form because you
16 didn't want me to mark this copy as the trial exhibit I
17 guess--

18 MR. PLUMMER: Right--

19 THE COURT: --right--

20 MR. PLUMMER: Correct.

21 THE COURT: All right. And I had really
22 thought--

23 MR. PLUMMER: All right, thank you, your Honor--

24 THE COURT: --we were going to mark all of these
25 today, I had told Debbie to bring all her materials

1 but--

2 MR. PLUMMER: Well--

3 THE COURT: Oh, well, you will see her at a
4 later date.

5 Now, no subject is next, 10/27, 10:22, pictures,
6 and also--

7 MS. MABRY: Judge, that is a duplicate and we
8 would move to not admit those.

9 THE COURT: The next one again 10/27, no sub-
10 ject, 10:31 pictures that I think I have already had
11 these again somewhere here today.

12 MS. MABRY: This is a different day and they
13 were all transmitted at the same time, so really it's a
14 single--

15 THE COURT: I looked at--I thought before this
16 exact thing with five, there are five on one
17 transmission?

18 MS. MABRY: Right.

19 THE COURT: And I--I've seen it--

20 MS. MABRY: I--

21 THE COURT: --and I already, I thought I said
22 earlier I guess if it was all at one time--

23 MS. MABRY: I believe you did admit it.

24 THE COURT: All right. That is what I thought
25 earlier, but we don't wanna have two sets of the same

1 thing.

2 MS. MABRY: No.

3 MR. PLUMMER: Right.

4 THE COURT: Okay. Next is Re: no subject,
5 10/28.

6 MS. MABRY: That's from him to her, and state of
7 mind, You're being paranoid, it has to be AOL, signed
8 big daddy.

9 THE COURT: All right.

10 MS. MABRY: And also as a statement of a co-
11 conspirator, in the instant message they get I think
12 kicked off of AOL and it appears that that's what hap-
13 pened here and that she is gettin' a little antsy about
14 it.

15 THE COURT: All right, this one document will
16 come in as state of mind.

17 Next is 10/28, Good morning, 5:09, her to him,
18 coming in.

19 Next, morning, 10/28/99, 5:41, her to him, com-
20 ing in.

21 The next one is, no subject, 10/28/99, 5:43
22 a.m., coming in, her to him.

23 The next 10/28/99 at 6:21 a.m., her to him.

24 MS. MABRY: Judge, if I--the last three I think
25 I just got caught up on, the one that says, I love you,

1 I love, I love you in capitals that's admitted--

2 THE COURT: In, it's her to him.

3 MS. MABRY: Okay, I'm fine.

4 THE COURT: Ten/twenty-eight/ninety-nine at
5 6:21, her to him, coming in.

6 MS. MABRY: Okay.

7 THE COURT: But I don't like the subject matter,
8 but it's her to him.

9 The next, no subject, 10/28/99 at 7:09, her to
10 him.

11 Next is no subject, 10/28, 7:10.

12 MS. MABRY: Her to him.

13 THE COURT: Coming in.

14 The next one is no subject, 10/28/99, 7:10.

15 MS. MABRY: Her to him.

16 THE COURT: Coming in.

17 The next one no subject, 10/28/99, 7:11, her to
18 him--

19 MS. MABRY: Her to him.

20 THE COURT: The next no subject, 10/28/99, 7:11,
21 her to him.

22 The next is no subject, 10/28/99, 7:12, coming
23 in.

24 The next is no subject, 10/28/99, 7:13, her to
25 him.

1 The next is no subject, 10/28/99, 7:14, her to
2 him.

3 The next one is no subject, 10/28/99 at 8:49.

4 MS. MABRY: Her to him--

5 THE COURT: Coming in, her to him.

6 The next no subject, 10/28/99, 8:50, her to him,
7 coming in.

8 The next no subject, 10/28/99, 8:51, her to him.

9 The next no subject, 10/28/99 at 8:52 a.m., her
10 to him, coming in.

11 The next no subject, 10/28/99, 8:52, her to him,
12 coming in.

13 The next no subject, 10/28/99, 11:06, photos.
14 Photographs--

15 MS. MABRY: Judge, this is again continuation of
16 showing the degree of her pregnancy, it's a single
17 transmission and it is not duplicate, and--

18 THE COURT: Right--

19 MS. MABRY: --it's from her to him--

20 THE COURT: --her to him, coming in.

21 Next is doctor's visit, 10--

22 MR. PLUMMER: Your Honor, if we could just--

23 MS. MABRY: Judge--

24 MR. PLUMMER: --could we have one second, we got
25 a little lost a couple minutes back and--

1 THE COURT: We got lost again?

2 MS. MABRY: Well, some--

3 MR. PLUMMER: See ours aren't--

4 MS. MABRY: --just a couple of places they're
5 not in the same order, it will only take a second.

6 (counsel conferring with counsel)

7 MR. PLUMMER: Thank you, your Honor.

8 MS. MABRY: Thank you.

9 THE COURT: All right, the next one has a label
10 Doctor's visit, 10/29/99, it's her to him.

11 If you want me to slow down, tell me that I
12 should.

13 The next one is subject, Playing, 10/29/99,
14 7:58, her to him, coming in.

15 Do we have to have all of that in?

16 MS. MABRY: On the last one that you just
17 mentioned--

18 THE COURT: Yeah. Well . . .

19 MS. MABRY: Just one more piece to the puzzle, I
20 guess.

21 THE COURT: I'd just encourage you to think
22 about whether you could use some kind of a stipulation
23 for some of this, Mr. Nickola and Ms. Mabry.

24 All right, the next one is no subject, 10/29/99
25 at 7:59, there is really nothing on it just "Good

1 night", so. The best I can make out is a state of mind
2 of Mr. Cassaday, coming in.

3 Next, there is no subject, 10/29 at 8:53.

4 MS. MABRY: Her to him.

5 THE COURT: State of mind.

6 MR. PLUMMER: Her to him, your Honor.

7 THE COURT: It's her to him, I'm sorry, I'm
8 looking at the wrong one--

9 MR. PLUMMER: So is the--

10 THE COURT: --her to him.

11 MR. PLUMMER: So is the prior one.

12 THE COURT: Is it?

13 MR. PLUMMER: Yeah.

14 MS. MABRY: Right.

15 THE COURT: Backing up, 10/29/99 at 7:59, her to
16 him.

17 MS. MABRY: Her to him.

18 MR. PLUMMER: Correct.

19 THE COURT: That will come in.

20 Ten/twenty-nine/ninety-nine at 8:53, her to him,
21 coming in--

22 MR. PLUMMER: Correct.

23 THE COURT: Now, we are moving to 10/30 now and
24 it states, honey, it's him to her--

25 MS. MABRY: That's him to her. Where is the

1 picture of my babies at, how come she hasn't scanned it,
2 I wanna see my babies, too. State of mind.

3 THE COURT: Questions.

4 MS. MABRY: And they are questions, they are not
5 even hearsay--

6 THE COURT: Admissible, coming in.

7 Next, RE: no subject, 10/30/99, state of mind--

8 MS. MABRY: That's him to her. Again, give me
9 live shots of my babies in your belly.

10 THE COURT: All right. The next one is, Hey
11 you, where did you go, 10/30/99. State of mind, coming
12 in--

13 MS. MABRY: State of mind, he's excited about
14 the baby.

15 THE COURT: The next, RE: Doctor's visit,
16 10/30/99.

17 MS. MABRY: Again state of mind, he talks about
18 being excited, twice as excited now that I know that
19 there are two.

20 THE COURT: Okay, that will come in, state of
21 mind.

22 Next RE: no subject, 10/30/99, state of mind.

23 Hello, sweetheart, 10/30/99 at 3:32.

24 MS. MABRY: Her to him.

25 THE COURT: No subject, 10/30/99 at 4:38.

1 MS. MABRY: Her to him.

2 THE COURT: Her to him.

3 Next no subject--

4 MS. MABRY: Her to him--

5 THE COURT: --at 6:20, her to him.

6 The next no subject, 10/30/99, 7:06, her to him.

7 Next, no subject, 10/31/99.

8 MS. MABRY: That's him to her, he misses her
9 terribly, state of mind, and he is gonna look for--he
10 wants pictures from her.

11 THE COURT: It's all state of mind, coming in.

12 MS. MABRY: Right.

13 THE COURT: The next one is no subject, 10/31/99
14 at 9:13, her to him.

15 The next one no subject, 10/31/99, 11:35, her to
16 him.

17 The next no subject, 10/31/99 at 12:28.

18 MR. PLUMMER: Your Honor, could you repeat that,
19 please, the identifying time?

20 MS. MABRY: Here, it's this one. That is her to
21 him.

22 THE COURT: It says on mine from Jerry's pool to
23 Sharee's pool.

24 MS. MABRY: Jerry's pool to Sharee's pool,
25 right, that would--

1 THE COURT: From her to him--
2 MS. MABRY: --be from her to him.
3 THE COURT: Coming in.
4 The next is no subject and it's a picture again,
5 and it has some writing at the bottom of the picture.
6 MS. MABRY: Is there a time on there?
7 THE COURT: Yes, it says 10:22:02. From her to
8 him.
9 MR. PLUMMER: Here, you can flip through it--
10 MS. MABRY: Oh, I thought you already--
11 THE COURT: But I don't know--
12 MR. PLUMMER: Yeah, you--
13 MS. MABRY: --admitted that.
14 THE COURT: I already admitted it?
15 MR. PLUMMER: I--I thought we had--
16 MS. MABRY: I thought you did, 10:22:02 no sub-
17 ject, 10--
18 MR. PLUMMER: It's a picture of the mountain and
19 a lake?
20 THE COURT: It looks like a mountain, right--
21 MR. PLUMMER: Yes.
22 THE COURT: My copy is pretty bad but--
23 MS. MABRY: Please let this end, I need to be
24 with you, I hate being away from you, is from her to
25 him.

1 THE COURT: Right, it's coming in, all right,
2 there we go.

3 Then we have the next a picture of her to him,
4 it's just a picture of herself, that's at 10:22:32 com-
5 ing in.

6 MS. MABRY: Judge--

7 THE COURT: Do we need all of them, there is
8 about--

9 MS. MABRY: No--

10 THE COURT: --three, there is three that look
11 real much alike.

12 MS. MABRY: How about the 10:23:02.

13 MR. PLUMMER: The other two will be out, your
14 Honor--

15 THE COURT: All right. Then I have a no sub-
16 ject, 10/31/99 at 10:24, pictures again.

17 MS. MABRY: Again a single transmission of the
18 progress of her pendancy--or pregnancy.

19 THE COURT: Her to him, coming in.

20 The next no subject, 10/31/99, 11:58, her to
21 him.

22 The next is subject, My darling Sharee, 11/1/99.

23 MR. PLUMMER: Whoops, your Honor, we had one
24 more in October.

25 THE COURT: That's all I have.

1 MS. MABRY: Ten/thirty one at 11:35:17.

2 THE COURT: Eleven thirty-five?

3 MR. PLUMMER: No, well, you got a different,
4 wait.

5 THE COURT: I don't have any more for October, I
6 ran out.

7 MR. PLUMMER: Your Honor, I believe the last one
8 you admitted in October was 10/31/99 at 11:35:17.

9 THE COURT: No, 11:58. I don't have--

10 MR. PLUMMER: Eleven fifty-eight twenty-three?

11 THE COURT: Yes.

12 MR. PLUMMER: Okay.

13 MS. MABRY: Then--

14 MR. PLUMMER: We have--we have one more of Octo-
15 ber 31, '99, at 11:35:17.

16 Do we need this in?

17 MS. MABRY: Yes.

18 MR. PLUMMER: Oh, it's the baby pictures--

19 MS. MABRY: Yeah.

20 THE COURT: I have not seen it.

21 MS. MABRY: We're showing it to defense counsel.

22 MR. PLUMMER: Did you have it, David?

23 MR. NICKOLA: (No verbal response)

24 MS. MABRY: Can I see your copy?

25 MR. PLUMMER: (No verbal response)

1 THE COURT: Since it is her to him, if you will
2 just get copies, please, that will come in.
3 MR. PLUMMER: Okay, your Honor, if you will just
4 give me a moment to make a note.
5 MR. NICKOLA: I have it.
6 MR. PLUMMER: Oh, you do.
7 MS. MABRY: You do have it.
8 MR. NICKOLA: Yes.
9 MS. MABRY: Okay.
10 MR. PLUMMER: Okay. Do you have it, your Honor?
11 THE COURT: Nope.
12 MR. PLUMMER: Give the Court that one.
13 THE COURT: Okay.
14 MS. MABRY: Oh, okay.
15 MR. PLUMMER: Oh, hand, hand, just one second--
16 THE COURT: It's all right, I'll get it later.
17 MR. PLUMMER: Here, it's gonna be right here.
18 MS. MABRY: Sergeant Shanlian is gonna go make a
19 copy in our office right now, and that would--
20 MR. PLUMMER: Which one--
21 MS. MABRY: --conclude that month.
22 THE COURT: That concludes the October package.
23 MR. PLUMMER: Which one, just checking to see
24 if--
25 SERGEANT SHANLIAN: Yeah.

1 MR. PLUMMER: Right. This one--
2 MS. MABRY: What? One that he is making of?
3 Yeah, right there--
4 THE COURT: It was. No, 10--11:35.
5 THE CLERK: Seventeen.
6 THE COURT: Well, where? I just wrote that in
7 in black, see right here.
8 THE CLERK: Yeah, it's--
9 THE COURT: Before.
10 Well, why didn't you put them in order?
11 THE CLERK: (No verbal response)
12 THE COURT: Thirty-three.
13 THE CLERK: That is an a.m., that's 17 a.m., 17
14 a.m. one.
15 THE COURT: Okay. I'm sorry, I have it out of
16 order because it had a.m., did you say p.m.?
17 MR. PLUMMER: No, I don't--
18 MS. MABRY: I didn't say either one--
19 MR. PLUMMER: --that said a. or m., your Honor,
20 I just--
21 THE COURT: So he doesn't need to copy them be-
22 cause I--
23 MS. MABRY: Okay--
24 THE COURT: --it was earlier and I'm sorry, I
25 thought you meant you wanted it in that stack right be-

1 fore the 11:58 and I didn't have one at 11:35 p.m.,
2 okay.

3 All right, thanks very much.

4 Now, are we ready to do November?

5 MR. PLUMMER: One moment, your Honor, please.

6 Yes, your Honor, thank you.

7 THE COURT: First one I think I said 11/1/99, My
8 darling, Sharee.

9 MS. MABRY: That's from him to her.

10 THE COURT: We're still--

11 MS. MABRY: Again a state of mind that he is re-
12 ferring to that, You grow two little babies that we made
13 and I can't even care for them.

14 THE COURT: Right.

15 MS. MABRY: I can't take care of them--

16 THE COURT: All right, it's admitted, state of
17 mind exception.

18 Next one is RE: no subject, 11/1/99.

19 MS. MABRY: That is from him to her--

20 THE COURT: We're still at state of mind--

21 MS. MABRY: --regarding state of mind.

22 THE COURT: The next is no subject, 11/1/99 at
23 12:43, her to him--

24 MS. MABRY: That--

25 THE COURT: --coming in.

1 MS. MABRY: Correct.

2 THE COURT: No subject is next 11/1 at 2:58.

3 MS. MABRY: That is from her to him--

4 THE COURT: Her to him.

5 The next one is no subject, it's one of these BD
6 Junk ones and I don't know what it is because there is--
7 the next ones I recognize as ultrasounds, this one is
8 not very clear on mine.

9 MR. PLUMMER: Your Honor--

10 THE COURT: You're wanting to move in a series
11 of purported ultrasound photos?

12 MS. MABRY: Yes, Judge.

13 THE COURT: There are four in my pack, is that
14 correct?

15 MS. MABRY: Actually, I'm only finding three.

16 MR. PLUMMER: There is four in the originals--

17 THE COURT: Well--

18 MS. MABRY: Four in the originals, okay.

19 THE COURT: I've got four. Maybe there are two
20 that are the same but they aren't.

21 MS. MABRY: No.

22 THE COURT: There is four.

23 Now, these are suppose--what are you trying to
24 show with this and with the nomenclature, is what I'm
25 trying to figure out?

1 MS. MABRY: Judge, what this whole thing is
2 about is that these photographs are allegedly from the
3 husband, the--Bruce Miller, the deceased, taunting Jerry
4 Cassaday and wait, I'm sorry, they're not, this is not
5 the series.

6 This her trying to prove that I'm pregnant be-
7 cause I think he asked for photographs of the babies, so
8 it's from her to him.

9 THE COURT: And then the next one that follows
10 is a transmission about 31 weeks to go.

11 MR. PLUMMER: Correct.

12 THE COURT: So they go along I see in time.

13 MR. PLUMMER: Correct.

14 MS. MABRY: They are from her user name to his.

15 THE COURT: They're at 5:51, 5:54, 5:57 and six
16 o'clock, four series ultrasound-type photographs and if
17 you hook up the screen name showing from her to his,
18 they will be admitted.

19 MR. PLUMMER: Thank you, your Honor.

20 Is that the same with the 31 weeks to go?

21 THE COURT: And the 31 weeks to go.

22 MR. PLUMMER: Thank you.

23 THE COURT: Next is no subject, 11/1/99, it's
24 her to him, at 12, no, 8:12.

25 The next is, Hi, honey, 11/2/99, it's him to

1 her.

2 MS. MABRY: He--

3 THE COURT: We're still on excitement, state of
4 mind--

5 MS. MABRY: I love the e-mails--

6 THE COURT: --admitted.

7 Next, RE: Hi, honey, 11/2/99 at 4:27, it's her
8 to him.

9 Next no subject, 11/2/99, her to him, at 5:10.

10 MS. MABRY: Her.

11 THE COURT: Next is 11--no subject, 11/2/99,
12 8:22.

13 MR. PLUMMER: One moment, your Honor.

14 THE COURT: It's her to him.

15 MR. PLUMMER: Your Honor, the last one that the
16 Court admitted was 11/2/99, 5:10, no subject, starts,
17 Jerry, I figured you would call?

18 THE COURT: Yes. Well, I actually went onto
19 11/2/99 at 8:22.

20 MR. PLUMMER: Okay.

21 THE COURT: Her to him.

22 MS. MABRY: We have that.

23 MR. PLUMMER: Thank you, your Honor. Okay.

24 THE COURT: Eleven/twenty-two(sic) is the next
25 one on no subject at 9:56, her to him.

1 MR. PLUMMER: Correct.

2 THE COURT: Okay, we are admitting that, yes, I
3 am, party admission. And now we getting into the de-
4 tails of the location of the B and D.

5 Then we have one called, You should read this,
6 11/5/99 at 4:40.

7 MS. MABRY: That's from her to him.

8 THE COURT: Okay, you can hook that up, the
9 Court obviously has to hear the foundation but . . .

10 The next one is, I want you back, 11/5/99,
11 that's at 6:15, her to him.

12 Is there a problem?

13 MR. PLUMMER: Just one second, your Honor.

14 MS. MABRY: Judge, the only . . .

15 (Counsel conferring with counsel)

16 This is from him to her where he is forwards it
17 back--

18 THE COURT: Which one, I don't know what one
19 you're on--

20 MR. PLUMMER: No, your Honor--

21 MS. MABRY: Eleven--

22 MR. PLUMMER: --excuse me, there are two e-mails
23 that you may have thought were the same. If you go back
24 to your 11/5 of '99 at 4:40 p.--:09 p.m.

25 THE COURT: That I thought were the same?

1 MR. PLUMMER: Well, I'm just, if you will just
2 follow me for a moment, your Honor, I think I will ex-
3 plain what I'm trying to say.

4 Do you see that one at 4--

5 THE COURT: Yeah, BD Junk, from BD Junk--

6 MR. PLUMMER: Right. Says, Hello Jerry I just
7 thought?

8 THE COURT: Yes.

9 MR. PLUMMER: Then right after that there is an-
10 other one that says, You should read this, at 11/5/99 at
11 11:23:22, do you see that--

12 THE COURT: Oh, yes, but in the middle I have
13 the 6:15 one.

14 MR. PLUMMER: Oh, I see.

15 MS. MABRY: Okay, that's from--that's from her
16 to him.

17 THE COURT: Right. The 6:15 there is not a
18 problem--

19 MS. MABRY: Okay--

20 MR. PLUMMER: Okay.

21 MS. MABRY: These--these other two should proba-
22 bly be side-by-side that appear to be the same but
23 aren't the same, but the one from him to her is a state
24 of mind, he is relating back to her, Look what I got,
25 this taunting e-mail.

1 THE COURT: Well, let me say this then, until
2 the foundation I have no idea about these two that are
3 called, You should read this.

4 MR. PLUMMER: Correct.

5 THE COURT: So I just don't know. Yes.

6 (Court conferring with the clerk)

7 So I guess I can say that until I hear the tes-
8 timony about all screen names which I assume will be
9 forthcoming, it is impossible to know, but assuming the
10 foundation is laid they will be admitted.

11 MR. PLUMMER: Thank you, your Honor.

12 THE COURT: So there--one is directed apparently
13 from her to him and one is forwarding it backwards--

14 MS. MABRY: Right--

15 MR. PLUMMER: Correct--

16 THE COURT: --from him to her.

17 MS. MABRY: Right.

18 THE COURT: Okay. Now, I'll put those side-by-
19 side for the moment.

20 Then we have a, Okay, you, what's up at--on No-
21 vember 6th.

22 MS. MABRY: His state of mind, he is gettin
23 worried.

24 THE COURT: All right, state of mind, worried.

25 Next is, Hey, 11/6/99, state of mind--

1 MS. MABRY: Again worried.

2 THE COURT: Next is, My love, 11/6/99.

3 MS. MABRY: He is coming back for the last time
4 and finally, good to meet you and your kids, and they
5 are beautiful and you're a great mommy and it's a co-
6 conspirator statement because he is coming back for the
7 last time, and a statement against interest.

8 THE COURT: Right, statement against interest
9 and then the other part of it, there is a lot of it
10 that's state of mind.

11 The next one on the list is, hey, 11/6/99.

12 MS. MABRY: The days are drawing closer, state
13 of mind.

14 THE COURT: There we go, state of mind--

15 MS. MABRY: And co-conspirator.

16 THE COURT: The next--

17 MS. MABRY: And against interest--

18 THE COURT: --is this is Sharee, from Sharee to
19 him, admitted, at 2:13.

20 The next one is no subject, 11/6/99 at 4:15.
21 Mine--again this is one of those BD Junk and--but it
22 seems to go with the companion--

23 MR. PLUMMER: Correct.

24 MS. MABRY: Correct.

25 THE COURT: --that follows at 4:16 which I'm

1 sorry, I don't understand these transmissions but--

2 MR. PLUMMER: And the one immediately preceding,
3 your Honor.

4 MS. MABRY: There's--

5 THE COURT: Preceding--

6 MS. MABRY: --three of them--

7 MR. PLUMMER: Oh, sorry.

8 MS. MABRY: There is three--

9 MR. PLUMMER: It's not that obvious that I call
10 that--

11 MS. MABRY: They're--

12 THE COURT: I have a 4:15, 4:16 and 4:17.

13 MR. PLUMMER: Correct.

14 MS. MABRY: Four fifteen, correct.

15 THE COURT: No subject; no subject; You should
16 read this one.

17 MR. PLUMMER: Correct.

18 THE COURT: And the indication is that the offer
19 of proof is these will be linked up through the screen
20 names to the Defendant Miller and to the screen name for
21 Mr. Cassaday, is that correct?

22 MS. MABRY: That's correct.

23 THE COURT: All right, from her to him then--

24 MS. MABRY: On 11/7--

25 THE COURT: --assuming the foundation is laid.

1 MS. MABRY: Okay.

2 THE COURT: Then I have a no subject, 11/7, an-
3 other BD Junk.

4 MS. MABRY: Her to him.

5 THE COURT: With the foundation--

6 MS. MABRY: Subject to the foundation--

7 THE COURT: --that will come in.

8 And the last one in my list is the polar bears,
9 11/12/99, 1:58. Try--I don't think this has any wording
10 on mine.

11 MS. MABRY: Judge, the screen names are differ-
12 ent on this one, I'd ask Mr. Plummer to address this
13 one.

14 MR. PLUMMER: You want me to explain it?

15 MS. MABRY: Go, yeah.

16 MR. PLUMMER: Your Honor, there is a couple of
17 things here and I apologize, my memory, I can't recall,
18 I believe, that the testimony will be that R.C. Duvall,
19 number four, is one on the Sharee Miller list and the
20 Bike Man For You is on the Jerry Cassaday list.

21 I can tell you, your Honor, that one of the is-
22 sues--one of the reasons this was printed and this is in
23 the simply of a way of making a statement, your Honor,
24 that we were prepared to present testimony that this--
25 that these--this particular image of these two polar

1 bears was found on both his computer and her computer,
2 but I guess for now I would just ask you to--that we be
3 allowed to reserve the right to make argument about the
4 admission of this document.

5 THE COURT: What's the purpose, the probative
6 value or relevance in the--of this?

7 MR. PLUMMER: As to the--the picture being on
8 both computers, your Honor--

9 THE COURT: Of even of offering the exhibit.

10 MR. PLUMMER: No, your Honor, if--if it be--
11 became critical during the trial to show that this com-
12 munication had past from one computer to the other, we
13 would be able to show that it was on one disk--on one
14 computer and found also on her computer. We are not
15 certain that that's even gonna be an issue come trial
16 time, your Honor, and that's why I'm just asking to re-
17 serve the right to argue this admission and leave it out
18 for now.

19 THE COURT: Leave it out for now?

20 MR. PLUMMER: Yes.

21 THE COURT: All right, leaving it out then.

22 All right, I think that completes the package of
23 e-mails that I have been offered.

24 All right, I think we should have a lunch break
25 and then we should resume after lunch to try to go

1 through the rest of the issues, but I wanna be sure,
2 have we completed the e-mails then from, Ms. Mabry, from
3 your list?

4 MS. MABRY: I'm sorry, I didn't hear your
5 question.

6 THE COURT: Have we completed the e-mails on
7 your list?

8 MS. MABRY: Yes.

9 THE COURT: Good, all right. Then--

10 MR. PLUMMER: Your Honor, we're--

11 THE COURT: I'm sorry.

12 MR. PLUMMER: We just aren't sure of how much is
13 left.

14 THE COURT: How much is left. Well, I was
15 handed several things when I came in, so maybe I should
16 look at them.

17 MS. MABRY: Well, one of them is just proposed
18 jury instructions which--

19 THE COURT: But I don't wanna deal with them to-
20 day, I wanna--

21 MS. MABRY: No, I didn't think you would.

22 THE COURT: I wanna deal with them actually,
23 have you submit them the day we start the trial, but we
24 will--

25 MR. NICKOLA: Act--

1 THE COURT: --have a conference at the close of
2 the proofs.

3 MR. NICKOLA: Actually my understanding is the
4 only other thing that is at least technically before the
5 Court is the prosecutor's Motion in Limine to admit for
6 purposes of trial all the preliminary exam exhibits that
7 were admitted at lower court, that is my understanding
8 of all that is left from--

9 THE COURT: Well, maybe that is.

10 MS. MABRY: And I was gonna inquire as to
11 whether or not there would be any--Mr. Nickola and I
12 have been having discussions about possible waivers of
13 some witnesses who have little value in this case and a
14 couple of 'em are out of state and--

15 THE COURT: Yeah, you gave me a list of issues,
16 that's why I hadn't even started on that--

17 MS. MABRY: Right, and that is the only other
18 thing we have other than the exhibits that were intro-
19 duced at the preliminary exam.

20 THE COURT: Well, I assume on those exhibits, I
21 mean, you would lay the foundation--

22 MS. MABRY: I--

23 THE COURT: --at the time and there were 23 of
24 those.

25 MS. MABRY: One of them was the tape that you

1 also viewed of, you know, the Jerry this is gonna all be
2 yours. We probably would need an advanced ruling on
3 that at least.

4 MR. NICKOLA: Judge, subject to all the founda-
5 tional requirements that is why I was--

6 THE COURT: Right, it's all right--

7 MR. NICKOLA: The Court has cleared that up be-
8 cause they have to admit all those documents.

9 The only exhibit that I'm concerned with in ad-
10 vance of trial would be the photographs, I guess I
11 phrased that wrong, subject to what we have already ex-
12 pressed, obviously I'm concerned about all exhibits, but
13 the particular exhibit that--that needs to be advanced
14 before bringing before the trial would be the photo-
15 graphs of Jerry Cassaday's, basically, head blown off,
16 they admitted that at district court, they want to seek
17 to admit that in front of the jury where he has got a
18 big gunshot wound in the top of his--

19 THE COURT: I looked at that picture, I see
20 there is one in a chair that it's okay, and I don't--why
21 do we need the one with the bloody face for?

22 MR. NICKOLA: That--that, not only--

23 MS. MABRY: Well, he was alleging at the pre-
24 liminary exam that he--may be possible that he didn't
25 kill himself.

1 MR. NICKOLA: Judge, I wasn't alleging anything.
2 The issue is--

3 MS. MABRY: I think they're--

4 MR. NICKOLA: The issue is, is the gruesomeness
5 of the photograph, number one. The issue, substantial
6 issue, in this particular case, undeniably, is Jerry
7 Cassaday himself, his credibility, whether or not he was
8 involved in this or not, obviously, the Court is famil-
9 iar with all that, but I believe not only are the photo-
10 graphs gruesome, but I also think the fact that they
11 show him dead reflect, and would unfairly reflect and
12 prejudice the jury into sympathizing with him or feeling
13 bad for him because of his--the gruesome photographs,
14 number one.

15 Number two, I'm also objecting because I think
16 that the photographs depict him sitting there with a Bi-
17 ble open. I don't think that that has any probative
18 value whatsoever, in fact, it is extremely prejudicial
19 when we talk about jurors, some of whom have very dif-
20 ferent levels of religious beliefs, and I think again
21 that opens a--a--a very big can of worms in terms of--

22 THE COURT: I don't know that they're needed
23 for--they have any--the pictures of him, I don't have a
24 problem in the chair where he is just slump over and it
25 is not gruesome, it's okay, but the Bible part probably

1 is not necessary and the one of his face with all the
2 blood is not necessary at this time on any issue that
3 I'm aware of.

4 MS. MABRY: Judge, if I could, the one about
5 the--the Bible is, as I said they were quite--I don't
6 believe those were even introduced until my redirect be-
7 cause they were insinuations that he didn't kill
8 himself.

9 THE COURT: Okay.

10 MS. MABRY: But the Bible itself goes to the
11 fact that he--he killed himself. I mean, he was looking
12 up, you know, certain passages and it's on his lap,
13 they're not prejudicial in anyway, I don't believe.

14 The only one I think is arguably prejudicial is
15 People's Proposed Exhibit 3 or People's Proposed Exhibit
16 Number 21 which is a head shot that shows--

17 THE COURT: Right, the bloody face--

18 MS. MABRY: --the bloody face.

19 THE COURT: Well, but I'm gonna say this, until
20 they're probative of a fact in issue, I'm not gonna ad-
21 mit anymore than the one in the chair. I don't see the
22 Bible or the bloody face being probative of a fact in
23 issue in the case right now, and that doesn't mean you
24 couldn't get it in later if you made an offering and we
25 had a sidebar, but right now, not likely.

1 Now, any other exhibits that you wanna talk
2 about?

3 MS. MABRY: The only other exhibit as I said was
4 the video--

5 THE COURT: That video of the--now what would be
6 the objection of that, it is her having sent this to him
7 with her voice, as I recall there are some words on it
8 even in her voice?

9 MS. MABRY: True. These are my kids, my house--

10 THE COURT: Yeah, it's her statements to him and
11 she sent it, so what is the issue?

12 MR. NICKOLA: She said what?

13 THE COURT: I believe on the tape that I recall
14 her saying certain things about, this will be yours or
15 here--here they are or just little comments as we go
16 along. I don't know they're--are they offered--how long
17 is that, it is just a short one, again, about five min-
18 utes if I recall?

19 MR. NICKOLA: The--the--

20 MS. MABRY: Five to ten minutes.

21 MR. NICKOLA: I believe approximately ten
22 minutes.

23 The--the, at least the copy I received there is
24 representation made by the prosecutor's office in their
25 pleadings that there is a quote in that video tape that

1 says this is Jerry, this is all gonna be yours.

2 THE COURT: Right. That definitely--

3 MR. NICKOLA: Now, unless--

4 THE COURT: --would come in as--

5 MR. NICKOLA: --I had an edited version--

6 THE COURT: You didn't hear that?

7 MR. NICKOLA: No.

8 THE COURT: Okay. Well, why don't you all re-
9 play it--

10 MR. NICKOLA: Now, I--I do that there is--there
11 is some statements, Judge, to the effect, can you handle
12 this, can you handle all this, I believe at least three
13 times but--

14 MS. MABRY: It--it is faint, I will agree that
15 it is faint and you have to listen very carefully.

16 MR. NICKOLA: Well, if they could just--if they
17 could point out to me at what point and then I could
18 listen real close.

19 THE COURT: Well, you all can play it--

20 MR. NICKOLA: I wanna make sure that I have what
21 they have--

22 MS. MABRY: If--if he wants to make an appoint-
23 ment with Mr.--

24 THE COURT: We can hook it up and let him play
25 it, please do that for him, all right.